

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

LENWARD SMITH,	)	
	)	
Plaintiff,	)	
	)	Civil Action File No.
v.	)	4:10-cv-00274-WTM-GRS
	)	
PROFIT SERVICES GROUP, LLC AND	)	
DAVID FREITAG	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' CONSOLIDATED MOTION AND BRIEF TO DISMISS FOR  
INSUFFICIENT SERVICE OF PROCESS**

COME NOW, Defendants Profit Services Group, LLC ("PSG") and David Freitag ("Freitag"), by special appearance and without waiving any defenses to personal jurisdiction, and move this Court pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure to dismiss Plaintiff's Complaint for failure to perfect service against Defendants within 120 days of filing suit. More than 120 days have elapsed since the Plaintiff filed the original Complaint. More than 120 days have elapsed since Plaintiff filed his Amended Complaint. Plaintiff can come forward with no evidence that Defendants have properly served in this case. This Court's April 29, 2011 Order [Doc. 12] highlighted the defects in the Plaintiff's purported service documents on the individual defendant and complete absence of service documents on the corporate defendant. Plaintiff has not properly served any Defendant and Plaintiff can provide no evidence to this Court to the contrary. Pursuant to Rule 12(b)(5) Defendant respectfully request that this case be dismissed without prejudice.

WHEREFORE, Defendants respectfully requests that this Motion be granted and that Plaintiff's Complaint be dismissed without prejudice.

Respectfully submitted this 30<sup>th</sup> day of June, 2011.

/s/ J. Keith Berry, Jr.

J. Keith Berry, Jr.

Attorney for Defendants

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_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed Defendants' Motion to Dismiss For Insufficient Service of Process using the CM/ECF system which will automatically send email notification of such filing to the following attorney of record:

Dennis Kurz  
[dkurz@attorneysforconsumers.com](mailto:dkurz@attorneysforconsumers.com)

Respectfully submitted this 30<sup>th</sup> day of June, 2011.

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J. Keith Berry, Jr.  
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